

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia.

APRIL TERM, 1920.

No. 3379. **646**

No. 9, SPECIAL CALENDAR.

UNITED STATES EX REL. SARAH E. McCATHRAN,
APPELLANT,

vs.

MICHAEL M. DOYLE, JUDGE OF THE MUNICIPAL COURT
OF THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED MARCH 23, 1920.

PRINTED MARCH 24, 1920.

Court of Appeals of the District of Columbia.

APRIL TERM, 1920.

No. 3379.

No. 9, SPECIAL CALENDAR.

UNITED STATES EX REL. SARAH E. McCATHRAN,
APPELLANT,

vs.

MICHAEL M. DOYLE, JUDGE OF THE MUNICIPAL COURT
OF THE DISTRICT OF COLUMBIA, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 3379.

UNITED STATES ex Rel. SARAH E. McCATHRAN, Appellant,

vs.

MICHAEL M. DOYLE, &c.

a Supreme Court of the District of Columbia.

At Law. No. 63461.

UNITED STATES ex Rel. SARAH E. McCATHRAN, Petitioner,

vs.

Hon. MICHAEL M. DOYLE, Judge of the Municipal Court of the
District of Columbia, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of
Columbia, at the City of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed, and pro-
ceedings had, in the above-entitled cause, to wit:

1 *Proceeding for Mandamus or Procedendo.*

Filed March 17, 1920.

In the Supreme Court of the District of Columbia.

At Law. No. 63461.

UNITED STATES ex Rel. SARAH E. McCATHRAN, Petitioner,

vs.

Hon. MICHAEL M. DOYLE, Judge of the Municipal Court of the
District of Columbia, Defendant.

To the Supreme Court of the District of Columbia:

Your petitioner, Sarah E. McCathran, respectfully states:

1. She is a citizen of the United States, a resident of the District
of Columbia, and brings this suit in her own right.

2. The defendant, the Honorable Michael M. Doyle, is also a citizen of the United States, a resident of the District of Columbia, and holds the office of Judge of the Municipal Court of the District of Columbia; and he is sued by reason of his refusal, as hereinafter stated, to take proceedings as required by law in a certain pending case in said Court, hereinafter described.

3. On the 4th day of March, 1920, petitioner filed in said Municipal Court of the District of Columbia her sworn complaint, setting up that she is entitled to the possession of premises known as Second Floor, 1749 Willard Street, N. W., located in the District of Columbia, and that the same are unlawfully detained from her and held without right by Annie C. McGee, a tenant at sufferance of petitioner, which tenancy expired March 3, 1920, as will more fully appear from the true copy of said complaint hereto annexed, marked "Exhibit A," and made a part hereof. Said case before said Municipal Court is known as L. & T. No. 183,054, entitled Sarah E. McCathran, plaintiff, vs. Annie C. McGee, defendant. Said

2 Annie C. McGee was duly served with summons in said case, requiring her to answer said complaint on March 16, 1920, at 10 o'clock A. M. On said March 16, 1920, said Annie C. McGee entered her appearance in said case, by her attorney George E. Edelin, and filed a written paper or plea stating:

"That the notice to quit, herein mentioned, is not made in good faith, and further, denies that the plaintiff desires the premises for her own use and occupancy."

As will more fully appear by a true copy of said written paper or plea hereto annexed, marked "Exhibit B." and made a part hereof.

4. On said March 16, 1920, said L. & T. case by petitioner against said Annie C. McGee came on for trial before the respondent hereto, the Honorable Michael M. Doyle, Judge of the Municipal Court, and the latter thereupon entered an order in said case as follows:

"Mch. 16, 1920.

"Over objection of counsel for plaintiff and upon plea of defendant held for filing of proper papers by either side before Rent Commission within a reasonable time."

Petitioner, by her counsel, before the entry of said order, opposed the same upon the following grounds:

1. That the provisions of the Ball Rent Bill relied upon in making said order are unconstitutional and void.

2. That the written paper or plea filed by said Annie C. McGee constitutes no justification for the entry of the said order.

3. That the written paper or plea filed by said Annie C. McGee does not sufficiently show the existence of a "dispute" within the meaning of the Ball Rent Act.

Notwithstanding petitioner's said objections, said respondent, the Honorable Michael M. Doyle, Judge of said Municipal Court of the District of Columbia, refused to proceed with the trial of the aforesaid case, and entered the suspension order hereinbefore set forth,

leaving petitioner without any lawful or adequate remedy, and said order stands unmodified.

Wherefore, the premises considered, petitioner prays:

1. That a rule to show cause, on a day to be fixed by this
3 Honorable Court, be issued against the defendant, the Honorable Michael M. Doyle, Judge of the Municipal Court of the District of Columbia, requiring him to show cause why the writ of mandamus, or, in the alternative, the writ of procedendo, should not issue herein directing him to proceed with the trial of the hereinbefore described case of McCathran vs. McGee, L. & T. No. 183,054, Municipal Court of the District of Columbia, without regard to the so-called Ball Rent Bill or the so-called Rent Commission.

2. That the writ of mandamus, or procedendo, issue against said defendant as referred to in the preceding paragraph.

3. For such other and further relief as the nature of the case may require.

SARAH E. McCATHRAN,
Petitioner.

GEO. E. SULLIVAN,
Attorney for Petitioner.

DISTRICT OF COLUMBIA, *To wit:*

Sarah E. McCathran, being first duly sworn, deposes and says that she has read the foregoing petition by her subscribed and knows the contents thereof; and that the statements therein contained are true.

SARAH E. McCATHRAN.

Subscribed and sworn to before me this 17th day of March, 1920.

J. R. YOUNG,

Clerk,

By ALF. G. BUHRMAN,

Ass't Cl'k.

4

"EXHIBIT A."

Filed March 17, 1920.

In the Municipal Court of the District of Columbia, No. 321 John Marshall Place.

No. L. & T., 183,054.

SARAH E. McCATHRAN, Plaintiff,

vs.

ANNIE C. McGEE, Defendant.

DISTRICT OF COLUMBIA, *To wit:*

Sarah E. McCathran being first duly sworn according to law, states that she is entitled to the possession of the premises No. —

Second Floor, 1749 Willard Street Northwest located in the District of Columbia, and that the same is unlawfully detained from her and held without right by the defendant Annie C. McGee, who was a tenant at sufferance of said premises under Stone & Fairfax, and the latter thereafter, on January 15, 1920, assigned its reversion to this complainant. The tenancy and estate of said defendant has been determined by the service, on February 2, 1920, of a due notice to quit which expired March 3, 1920. Complainant is the bona fide purchaser and owner of said premises and the landlord of the defendant, and complainant purchased said premises for her own occupancy and actually desires and intends to use said premises as the home for herself and family. Complainant therefore prays that a summons be issued commanding the defendant to appear and show cause why judgment should not be given against her for the restitution of the possession of said premises.

SARAH E. McCATHRAN.

5 Subscribed and sworn to before me this 4th day of March
A. D. 1920.

BLANCHE NEFF, [SEAL.]
Clerk Municipal Court, D. C.

“EXHIBIT B.”

In the Municipal Court of the District of Columbia.

L. & T., No. 183,054.

SARAH E. McCATHRAN

vs.

ANNIE C. McGEE.

Comes now the defendant, Annie C. McGee, by her attorney, and for a defense to the above entitled cause of action, states:

That the notice to quit, herein mentioned, is not made in good faith, and further, denies that the plaintiff desires the premises for her own use and occupancy;

Wherefore, by reason of the foregoing, it is moved that this cause be dismissed for the lack of jurisdiction by virtue of the Food Control and District of Columbia Rents Act, Public Number Sixty-three (63)—Sixty-sixth (66th) Congress, generally known as the Ball Rent Bill.

GEORGE E. EDELIN,
Attorney for the Defendant.

6

Rule to Show Cause.

Filed March 17, 1920.

In the Supreme Court of the District of Columbia.

Upon consideration of the Petition filed herein, It is, by the Court, this 17th day of March, 1920, ordered, that the Honorable Michael M. Doyle, Judge of the Municipal Court of the District of Columbia, named as defendant thereto, show cause herein on Friday, March 19, 1920, at 10 o'clock a. m., why the writ of mandamus, or, in the alternative, the writ of procedendo, should not issue herein directing him to proceed with the trial of the case of McCathran vs. McGee, L. & T., No. 183,054, before the Municipal Court of the District of Columbia, without regard to the so-called Ball Rent Bill or the so-called Rent Commission.

By the Court:

WILLIAM HITZ,
Justice.

Answer to Petition and Rule to Show Cause.

Filed March 19, 1920.

In the Supreme Court of the District of Columbia.

The return and answer of the defendant Michael M. Doyle, to the petition of Sarah E. McCathran, and the rule to show cause issued thereon, on the seventeenth day of March, 1920, respectfully shows as follows:

1. Upon information and belief, the defendant admits the truth of the allegation contained in the first paragraph of the said petition.

2. He admits the truth of the allegations set forth in paragraph 2, of the said petition, except those allegations wherein it is stated that he is sued by reason of his refusal to take proceedings as required by law in a certain pending case and as to these allegations he admits that he has refused to proceed further in the said case, but denies that he is required by law to take any further proceeding.

3. He admits the truth of the allegations set forth in paragraph 3, of the said petition.

4. As to the allegations set forth in paragraph 4, of the said petition, he admits that on the 16th day of March, 1920, the said cause came on for trial before the respondent and by reason of the plea of the defendant Annie C. McGee, filed therein, and reading as follows:

"That the notice to quit herein mentioned is not made in good faith, and further denies that the plaintiff desires the premises for her own use and occupancy."

he thereupon entered an order in said case as follows:

"March 16th, 1920.

Over objection of counsel for plaintiff and upon plea of defendant, held for filing of proper papers by either side before Rent Commission, within a reasonable time."

He further admits that before the entry of the said order, petitioner herein, by her counsel, opposed the same on the grounds:

1. That the provisions of the Ball Rent Bill relied upon in making said order are unconstitutional and void.

2. That the written plea filed by Annie McGee, constitutes no justification for said order.

3. That the written paper or plea filed by the said Annie McGee does not substantially show the existence of a "dispute," within the meaning of the Ball Rent Act.

Respondent further admits that notwithstanding said objections, he refused to proceed with the trial of the said case, and states that his said refusal was based upon the provision of the Ball Rent Act, wherein jurisdiction to hear and determine the matters in the said controversy, to wit: the good faith of the plaintiff's demand, had been conferred upon the District of Columbia Rent Commission. The Respondent denies that the petitioner was left without any lawful and adequate remedy, but to the contrary states, that she has her lawful and adequate remedy, the same being a determination of the matter in controversy, to wit: the good faith of the plaintiff's demand, by the District of Columbia Rent Commission, under and by virtue of the Act of Congress, Public No. 63—66th Congress, known as the Food Control and District of Columbia Rents Act, and the entry of judgment in the Municipal Court based upon the determination of the said Commission.

For further answer the respondent says that he is informed and believes, and therefore, avers that immediately following the continuance of the said case by the respondent, to wit, on the 18th day of March, 1920, the said Annie C. McGee, filed a claim with the Rent Commission of the District of Columbia against said petitioner,

9 Sarah E. McCathran, asking for a determination by the said Commission, of the dispute as to the accuracy and sufficiency of the statements in the said notice to quit, and the good faith of the demand for the possession of the said premises which claim is now pending before said Commission.

And now, having fully answered, he prays that he be dismissed with reasonable costs in this behalf sustained.

(Sig.)

l

MICHAEL M. DOYLE.

(Sig.)

JULIUS PEYSER,
GEORGE E. EDELIN,

Attorneys for Respondent.

DISTRICT OF COLUMBIA,
To Wit:

I do solemnly swear that I have read the foregoing return and answer, by me subscribed and know the contents thereof; that the matters and facts therein stated upon personal knowledge are true, and those matters stated upon belief, I believe to be true.

(Sig.)

MICHAEL M. DOYLE.

Subscribed and sworn to before me this 18th day of March, 1920.

[SEAL.] (Sig.)

BLANCHE NEFF,
Notary Public, D. C.

10

Demurrer to Return.

Filed March 19, 1920.

In the Supreme Court of the District of Columbia.

Demurrer to Return.

Petitioner says that the return of defendant is bad in substance.

GEO. E. SULLIVAN,
Petitioner.

Points of Law.

1. The provisions of the Ball Rent Bill relied upon in the return are unconstitutional and void.

2. The plea of Annie C. McGee referred to in the return constitutes no justification for refusing trial in the Municipal Court.

3. The reference in the return to proceedings having since been instituted by Annie C. McGee before the Rent Commission, is irrelevant and incompetent.

11

Supreme Court of the District of Columbia.

Friday, March 19th, 1920.

Session resumed pursuant to adjournment, Mr. Justice Hitz presiding.

* * * * *

Upon consideration of the demurrer of petitioner filed herein to the respondent's answer to petition and rule to show cause herein, it is ordered that said demurrer be, and the same hereby is overruled; whereupon the petitioner now in open Court says that she will stand upon her demurrer.

Wherefore, it is considered that the rule to show cause herein be and the same is hereby discharged, the petition is dismissed, and that the respondent recover of petitioner the costs of his defense, to be taxed by the Clerk, and have execution thereof.

From the foregoing the petitioner by her Attorney in open Court, notes an appeal to the Court of Appeals of the District of Columbia, and the penalty of a bond for costs on said appeal is hereby fixed in the sum of One Hundred dollars (\$100).

Memorandum.

March 22, 1920.—Appeal Bond approved and filed.

12

Assignment of Errors.

Filed March 22, 1920.

* * * * *

1. The Court erred in overruling petitioner's demurrer to the return.

2. The Court erred in not sustaining petitioner's demurrer to the return.

3. The Court erred in not holding that the provisions of the Ball Rent Bill relied upon in the return are unconstitutional and void.

4. The Court erred in not holding that the plea of Annie C. McGee referred to in the return, constituted no justification for the action of the Municipal Court.

GEO. E. SULLIVAN,
Attorney for Petitioner.

Designation of Record.

Filed March 22, 1920.

* * * * *

The Clerk of the Court will please prepare transcript of record on appeal, to include the following:

1. Petition, with exhibits.
2. Rule to show cause.
3. Return.
4. Demurrer to return.
5. Judgment; appeal noted, and amount of cost bond fixed.
- 13 6. Memo. of filing and approval of cost bond on March 22, 1920.
7. Assignment of errors.
8. This designation.

GEO. E. SULLIVAN,
Attorney for Petitioner.

14 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 13, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 63461 at Law, wherein United States ex rel. Sarah F. McCathran is Petitioner and Hon. Michael M. Doyle, Judge of the Municipal Court of the District of Columbia is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 23rd day of March, 1920.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk,

By W. E. WILLIAMS,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3379. United States ex rel. Sarah E. McCathran, appellant, vs. Michael M. Doyle, &c. Court of Appeals, District of Columbia. Filed Mar. 23, 1920. Henry W. Hodges, Clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA

FILED

MAR 26 1920

Henry C. Hodges
In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1920.

No. 3379.

No. 9, Special Calendar.

UNITED STATES EX REL. SARAH E.
McCATHRAN, APPELLANT,

vs.

MICHAEL M. DOYLE, JUDGE OF THE MUNICI-
PAL COURT OF THE DISTRICT OF
COLUMBIA.

BRIEF FOR APPELLANT.

GEORGE E. SULLIVAN,
Attorney for Appellant.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1920.

No. 3379.

No. 9, Special Calendar.

UNITED STATES EX REL. SARAH E.
McCATHRAN, APPELLANT,

vs.

MICHAEL M. DOYLE, JUDGE OF THE MUNICI-
PAL COURT OF THE DISTRICT OF
COLUMBIA.

BRIEF FOR APPELLANT.

Statement.

This appeal is taken from a final judgment of the Supreme Court of the District of Columbia (Rec., pp. 7-8), refusing to award either a mandamus or a procedendo to compel a trial before the Municipal Court, in a landlord and tenant case, which had been held up to await the institution and disposition of proceedings before the so-called Rent Commission under the so-called Ball Rent Bill (Act of October 22, 1919, 1st Session, Chapter 80, Title II, 41 Stats., p. 298 et seq.).

As will appear from the petition for mandamus or procedendo (Rec., pp. 1-4), the return (Rec., pp. 5-7), and the demurrer to the return (Rec., p. 7), which demurrer was overruled by the court below, and a judgment

138 U.S. 151

dismissing the petition entered (Rec., pp. 7-8), no questions of fact are presented, but questions of law, solely, namely:

1st. Whether the provisions of said Ball Rent Bill relied upon in the return are unconstitutional.

2nd. Whether the jurisdiction of the Municipal Court over a case can be suspended or ousted by reason of later proceedings or prospective proceedings before the Rent Commission.

Assignment of Errors.

The court below erred:

1. In overruling appellant's demurrer to the return.
2. In not sustaining appellant's demurrer to the return.
3. In not holding that the provisions of the Ball Rent Bill relied upon in the return are unconstitutional and void.
4. In not holding that the plea of Annie C. McGee referred to in the return constituted no justification for the action of the Municipal Court.

ARGUMENT.

I.

Ball Rent Bill Unconstitutional.

1. The first ground of unconstitutionality is that it violates the due process clause of the Fifth Amendment. This ground is so ably presented in brief already filed for another appellant in Case No. 3372, *Hirsh vs. Block*, pending before this Honorable Court, that appellant here will content herself with citing the decision by this court in *Heitmuller vs. Stokes*, 48 Wash. Law Rep., 71,

that it is not a taking of "private property for public use" to deprive one individual (the landlord) of his property for the benefit of another individual (the tenant), and also citing the decision of the Supreme Court of the United States in *Producers' Transportation Company vs. Railroad Commission*, Adv. Op., No. 6, February 1, 1920, p. 166, that private property can not become public or affected with a public interest by mere legislative fiat, without either the consent of the owner or an actual taking and compensation under the power of eminent domain. The act is also partial and discriminatory in the *option* which it gives to tenants without definite obligation on their part for the same period.

2. The second ground of unconstitutionality is that it violates the provisions of the Seventh Amendment by denying the right of trial by jury as at common law and compelling submission of questions of fact pertaining to an owner's right of recovery of his real estate to decision by a commission, whose findings upon questions of fact are to be final and conclusive. It is indisputable, of course, to such an extent that the court will take judicial notice of it, that all rental property in the District of Columbia occupied by a tenant is of the value of more than \$20.

II.

Case in Municipal Court Not Ousted or Affected by Later Proceedings Instituted Before Rent Commission.

This proposition is believed to be so fundamental as to require no argument, and consequently appellant is entitled to have her trial in the Municipal Court proceeded with, regardless of the validity or invalidity of the Ball Rent Bill generally.

Conclusion.

It is submitted that the judgment below should be reversed, with directions to sustain appellant's demurrer to appellee's return and issue a writ of procedendo directing appellee to proceed with the trial of the case of McCathran *vs.* McGee, L. & T., No. 183,054, before the Municipal Court of the District of Columbia, without regard to the so-called Ball Rent Bill or the so-called Rent Commission.

Respectfully submitted.

GEORGE E. SULLIVAN,
Attorney for Appellant.

IN THE
Court of Appeals, District of Columbia.

COURT OF APPEALS
DISTRICT OF COLUMBIA
APRIL TERM, 1920.
FILED

APR 17 1920

No. 3379.

Henry W. Hodges.
Blair
No. 9, SPECIAL CALENDAR.

UNITED STATES EX REL. SARAH E. McCATHRAN,
APPELLANT,

vs.

MICHAEL M. DOYLE, JUDGE OF MUNICIPAL COURT OF
THE DISTRICT OF COLUMBIA, APPELLEE.

BRIEF FOR APPELLEE.

JULIUS I. PEYSER,
GEORGE E. EDELIN,
Attorneys for Appellee.

IN THE
Court of Appeals, District of Columbia.

APRIL TERM, 1920.

No. 3379

No. 9, SPECIAL CALENDAR.

UNITED STATES EX REL. SARAH E. McCATHRAN,
APPELLANT,

vs.

MICHAEL M. DOYLE, JUDGE OF MUNICIPAL COURT OF
THE DISTRICT OF COLUMBIA, APPELLEE.

BRIEF FOR APPELLEE.

Statement of the Case.

This proceeding arose out of a suit in the Municipal Court for possession of an apartment filed by Sarah E. McCathran against Annie C. McGee, Landlord and Tenant, No. 183,045. The action was based upon a complaint wherein the plaintiff stated she was the purchaser of the premises involved and desired the same for her own use and occupancy. At the

trial the defendant interposed a plea disputing the good faith of the plaintiff, denying that plaintiff wanted the premises for her own use and occupancy. The Municipal Court thereupon refused to proceed further with the trial of the case, holding the same subject to a determination of the issues presented in said plea by the Rent Commission. Thereupon the plaintiff prayed for a writ of mandamus, or, in the alternative, *procedendo* in the Supreme Court of the District of Columbia, against the Honorable Michael M. Doyle, Judge of the Municipal Court, then presiding in landlord and tenant cases. A demurrer to the appellee's answer was filed, which demurrer was overruled. This is an appeal from judgment of the Supreme Court overruling the demurrer.

ARGUMENT.

The Ball Rent Law.

The record discloses (Record, page 6) that the respondent-appellee refused to proceed with the trial of this case by virtue of the Ball Rent Bill. The appellant, in her demurrer, attacks the constitutionality of this law. It has been uniformly held by the Supreme Court of the United States that in order to attack the constitutionality of a law the party so attacking the same must be affected and prejudiced thereby and must affirmatively show that he has been so injured. The general allegation by appellant that the law is unconstitutional, without showing an injury suffered by the application of the law, is insufficient.

"A plaintiff is bound to show that he has personally suffered an injury by the application of a law before he can institute a bill for relief to test its constitutionality."

Turpin *vs.* Lemon, 187 U. S., 51.

It is apparent, from a review of the authorities, that the courts are loath to pass upon the constitutionality of a law

brought up in a mandamus proceeding, and if any way presents itself to the court to dispose of the matter otherwise the validity of the law will not be questioned. Nor can a party attack the constitutionality of a law in a mandamus proceeding unless he has been injured by the application thereof. See:

Ramagnano *vs.* Crook, 88 Ala., 450; 7 So., 247.

People *ex rel.* Hall *vs.* San Francisco, 20 Cal., 592.

Summerson *vs.* Schilling, 94 Md., 591; 51 Atl., 612.

United States *ex rel.* Siegel *vs.* Board of Liquidation,
20 C. C. A., 622; 41 U. S. App., 414; 74 Fed., 489.

State *ex rel.* Columbus *vs.* Mitchell, 31 Ohio St., 592.

State *ex rel.* Goodloe *vs.* Lanier, 47 La. Ann., 568; 17
So., 130.

Smith *vs.* Saginaw, 81 Mich., 123; 45 N. W., 964.

Appellant's first ground of attack is that the Ball Rent Bill violates the due process clause of the 5th amendment of the Constitution, but she does not show wherein she has been deprived of her property without due process of law. Until she does affirmatively show that she is injured she cannot complain of the invalidity of the Act. As a matter of fact, so far as this law is concerned, there has been no injury to her vested property rights, nor has she suffered any prejudice by the application of the Ball Law. The statute provides a remedy whereby she may obtain possession of her property, which might be effectual in granting her the relief desired. She has refused to pursue that remedy. It may be possible that in pursuing the remedy as outlined by the law she would have been refused the possession of her property. Then, and not until then, would she be in a position to claim that she had been deprived of her property without due process of law, for the reason that the courts, as concerns the determination of the constitutionality of a law, cannot speculate in possibilities. Because the Ball Law changes her remedy appellant cannot complain unless in having pursued

that remedy she is actually deprived of her property. There is no vested right in a remedy. (*Red River Bank vs. Craig*, 181 U. S., 548.) There is no property right in a rule of procedure. This question of prejudice has been fully covered, both as to argument and as to law, in the brief already filed for another appellee, in the case number 3372, *Hirsh vs. Block*, pending before this Honorable Court, and it is not the purpose here to go into complete details concerning a question so fully presented to the court in this other case.

The Ball Rent Law does not deprive persons of their property, as is contemplated by the Constitution. It merely preserves the *status quo* of the decree of use to which the property has been placed, by the owner and landlord, under conditions generally dictated by himself. All the indicia of ownership are reserved to the owner. He has the free right to alienate; he may give it away; he may sell it; he may devise it. The only limitation is that he may not use the same so freely as to prejudice the rights, safety, health, convenience, and happiness of the public and community and the proper administration of the affairs of government.

The business (and it is a business) of renting of real estate in the District of Columbia has reached a condition of not only local but of national importance and concern. Business which at one time was private may, by the lapse of a very short period of time, become vitally public.

The inherent right of Congress to exercise its police power fully warrants the regulation of any business of a public nature or affected with a public interest. The police power "may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare." (Holmes, J., in *Noble State Bank vs. Haskell*, 219 U. S., 104, 111.)

This power of Congress is fully discussed in the brief, heretofore referred to, in the case of *Hirsh vs. Block*.

It is true, as is suggested by the appellant, that business cannot become public or affected with a public interest by mere legislative fiat, and no claim is made here that the business of renting property in the District of Columbia has become affected with a public interest by and with the creation of the Ball Rent Law. That law merely recognizes and announces a condition which had already existed. It is not the words of the Act which make the business public; it is the nature of the business itself and the circumstances and conditions surrounding that business.

Concerning the alleged option given the tenant under the Ball Law, that does not affect the present case, for the reason that if the appellant pursues the remedy prescribed by law she may obtain possession of the premises.

The second ground of argument is that the Ball Law deprives the appellant of a right to a trial by jury as at common law and in violation of the provisions of the 7th amendment of the Constitution, but again she does not affirmatively state where she has been so prejudiced.

Here, again, we must first ascertain if the appellant is in a position to attack the constitutionality of the law upon this ground. Has she been deprived of a trial by jury? It is a well-settled rule that a trial before the Municipal Court without a jury is constitutional (*Capital Traction Co. vs. Hoff*, 174 U. S., p. 1), for the reason that on appeal to the Supreme Court of the District of Columbia a trial by jury is granted. It would be futile to ask that the Municipal Court be directed to proceed with a trial by jury when such a trial cannot be had there. The record does not disclose the fact that the appellant has made a demand for a trial by jury, nor has the appellant placed herself in such a position as to ask for a trial by jury or to be denied a trial by jury. She instituted her action in the Municipal Court, and there are more ways than one for her to get her case in the Supreme Court, and there properly make a demand for a trial by jury. Whether such a demand would be refused there, is too remote for a discussion here. Suffice it to say that she has not asked

for a trial by jury, has not been denied one, and has not, therefore, been prejudiced or injured, and consequently cannot attack the Ball Bill from that angle. The request for mandamus for this reason is prematurely made.

Further, appellant is, in effect, asking this Honorable Court to direct the respondent-appellee to proceed with the trial of the case without a jury, because she claims she is deprived of a trial by jury before the Rent Commission. Having thus waived her right to a trial by jury, she cannot now complain of the lack of it, nor can she assert that she has suffered an injury by the law which does not provide for a trial by jury.

**Effect of the Controversy Before the Rent Commission on
Proceedings in the Municipal Court of the
District of Columbia.**

It is fundamentally true that the court which first obtains jurisdiction of a case has a right to retain it until the case is finally disposed of, and its jurisdiction is not subject to be ousted by a court exercising a concurrent jurisdiction. The power to hear and determine a cause is jurisdiction. (*Byers vs. McCauley*, 149 U. S., 608.) The Ball Law strips the Municipal Court of the power to hear and determine certain issues and vests such power in the Rent Commission, and when such an issue has been raised either before or after the institution of an action in the Municipal Court, it is beyond that power of that court to render judgment or finally dispose of the case until these issues are determined. The jurisdiction of the two bodies is not concurrent.

"Where a remedy is statutory only, every court which takes jurisdiction for its enforcement is limited in its power by the statute, under which alone it can act."

East Tennessee & G. R. Co. *vs.* Southern Tel.
Co., 112 U. S., 306.

CONCLUSION.

From the foregoing it is obvious that the appellant has suffered no injury by the application of the Ball Law, and therefore she cannot attack its validity. It is also submitted that the jurisdiction of the Municipal Court is affected by the raising of issues properly before the Rent Commission, and the Municipal Court cannot proceed to final judgment until those issues have been determined.

Respectfully submitted,

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